

REMARKS

Reconsideration of the present application is respectfully requested in view of the above Amendments and the following Remarks. Claims 3-4 and 7-29 were pending in the application; claims 4, 7, 10-11, and 15-17 have been withdrawn by the Examiner. Applicant hereby cancels claims 4, 7, 10, 11, and 28 without acquiescence to any rejection and without prejudice to prosecution of the cancelled subject matter in a related divisional, continuation, or continuation-in-part application. Without acquiescence to any rejection, claims 3, 8, 9, and 12-14 have been amended to more particularly point out and distinctly claim certain embodiments of the Applicant's invention. No new matter has been added by these amendments. Support for the amendments can be found throughout the specification, for example, at page 2, lines 16-17; and page 12, lines 14-15. Upon entry of the Amendments submitted herewith, claims 3, 8, 9, 12-14, 18-27, and 29 will be under examination.

Obviousness-Type Double Patenting Rejection

The Examiner provisionally rejected claims 3, 8, 9, 12-14, 18, 22-24, and 28 for alleged obviousness-type double patenting over claims 5-7, 13, 13, 17, 20, 47-53, and 57-59 of co-pending U.S. Application No. 11/831,368, filed July 31, 2007, *after* the filing date of the instant application.

Applicant traverses this rejection and submits that the instant claims are non-obvious over the claims in U.S. Application No. 11/831,368. Applicant notes the present application is the earlier filed of the two co-pending applications and that examination has not yet begun in co-pending U.S. Application No. 11/831,368. In fact, a Filing Receipt has not yet been issued by the PTO for co-pending U.S. Application No. 11/831,368. If this provisional nonstatutory obviousness-type double patenting rejection is the only rejection remaining in the present application after entry of the present Amendments and consideration of the remarks herein, Applicant respectfully requests withdrawal of this provisional rejection in accordance with M.P.E.P § 804 (I)(B)(1) so that the present application may proceed to allowance.

Rejections Under 35 U.S.C. § 112, Second Paragraph

The Examiner rejected claims 3, 9, 12-14, and 18-29 under 35 U.S.C. § 112, second paragraph, asserting that the claims are indefinite. Applicant traverses these rejections and submits that the instant claims are clear and definite. The specific grounds for rejection and traversal are detailed below.

(a) The Examiner asserts that claim 3 is indefinite regarding the recitation “at least one of the immunogenic amino-terminal polypeptides of the fusion polypeptide” (lines 10 and 11). The Examiner asserts that the claim lacks clarity regarding whether the “at least one of the immunogenic amino-terminal polypeptides” is from outside the multivalent immunogenic portion or is at least one of the six different Group A streptococcal serotypes as recited.

Claim 3 as amended herewith recites “wherein the at least one of the six immunogenic amino-terminal polypeptides of the multivalent immunogenic portion is selected from Group A streptococcal serotype 2, serotype 11, serotype 22, and serotype 28.” Applicant submits that this amendment clarifies the subject matter of claim 3, and renders moot the instant rejection to claim 3.

(b) and (c) The Examiner asserts that claim 3 is indefinite with respect to the recitation “a” Group A streptococcal serotype (line 11); the Examiner applies an analogous rejection to claims 8-9, 12-13, and 28.

As an initial matter, Applicant notes that rejection of claim 28 is moot in view of the amendments submitted herewith, which include cancellation of claim 28 without acquiescence or prejudice. Claims 3, 8, 9, 12, and 13 have been amended to delete the recitation “a,” thereby obviating the basis for this rejection of the claims.

(d) and (e) The Examiner asserts that claim 8 appears to lack proper antecedent basis in the recitation “fusion polypeptide according to claim 3 wherein at least one of the immunogenic amino-terminal polypeptides...is from Group A streptococcal serotype 2,” and applies this same rejection to claims 9, 12, 13, and 28. With regard to claim 8, the Examiner questions whether this recitation relates to an additional serotype 2 immunogenic polypeptide other than the serotype 2 polypeptide recited in the base claim 3.

Applicant traverses this rejection and submits amended claims 8, 9, 12, and 13 are clear and definite. Amended claim 8, for example, relates to the hybrid fusion polypeptide wherein the at least one of the six immunogenic amino-terminal polypeptides of the multivalent immunogenic portion is from Group A streptococcal serotype 2. Accordingly, Applicant submits that claims 8, 9, 12, and 13 particularly point out and distinctly claim certain particular embodiments of Applicant's invention. As noted above, rejection of claim 28 is moot in view of the amendments submitted herewith, which include cancellation of claim 28.

(f) The Examiner asserts that claim 14 is vague with respect to the recitation, "wherein the fusion polypeptide elicits an immune response comprising opsonic antibodies against Group A streptococcal M protein." The Examiner asserts that the claim lacks clarity with respect to whether opsonic antibodies are elicited against generic streptococcal M protein of any serotype.

Applicant traverses this rejection and submits that amended claim 14 meets the requirements for definiteness. Present claim 14 recites that the hybrid fusion polypeptide elicits an immune response against a Group A streptococcal serotype from which one of the six immunogenic amino-terminal polypeptides is obtained, wherein the immune response comprises opsonic antibodies against the Group A streptococcal serotype, which antibodies do not cross-react with human tissue. Accordingly, the claimed subject matter relates to opsonic antibodies that are specific for a Group A streptococcal serotype that is included within the scope of the claims.

(g) The Examiner asserts that claims 8, 9, 12-14 and 18-29 are indefinite for depending from rejected claim 3. As discussed herein, amended claim 3 is clear and definite; therefore, claims dependent thereon are also clear and definite.

Applicant submits that claims 3, 9, 12-14, 18-27, and 29 satisfy the requirements for clarity and definiteness under 35 U.S.C. § 112, second paragraph, and respectfully requests withdrawal of these rejections.

Applicants submit that claims 8, 9, 12-14, 18-27, and 29 in the application are allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Respectfully submitted,
SEED Intellectual Property Law Group PLLC

/Mae Joanne Rosok/

Mae Joanne Rosok
Registration No. 48,903

MJR:am

701 Fifth Avenue, Suite 5400
Seattle, Washington 98104
Phone: (206) 622-4900
Fax: (206) 682-6031

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